

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES EDWARD TAYLOR, JR.,

No. 2:23-cv-0005 AC P

Plaintiff,

ORDER

v.

HO, et al.,

Defendants.

Plaintiff, a county prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 6. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
 2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against "a
 5 governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a).
 6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
 7 "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]
 8 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

9 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."
 10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 11 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal
 12 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,
 13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
 14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
 15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
 16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
 18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
 19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
 20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
 22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,
 23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
 24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a
 25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the
 26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain
 27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
 28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
 3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
 4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
 5 content that allows the court to draw the reasonable inference that the defendant is liable for the
 6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
 7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
 8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
 9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
 10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 Plaintiff alleges that defendants Ho, Fiji, and Sacramento County denied him adequate
 13 medical treatment. ECF 1. Specifically, plaintiff alleges that he was in need of hip replacement
 14 surgery, and that such surgery was scheduled prior to his incarceration. Id. at 3. However, even
 15 after plaintiff reported to Ho that he was in “great physical pain,” Ho instead denied the needed
 16 surgery, recommended physical therapy with use of a cane and walker, and falsely reported that
 17 plaintiff had refused surgery. Id. This resulted in plaintiff experiencing multiple falls and
 18 continued pain. Id. at 4. Although plaintiff has filed several grievances and requests for surgery,
 19 nothing has been done to provide him adequate treatment or the necessary surgery. Id. at 3-4.

20 IV. Claims for Which a Response Will Be Required

21 A Fourteenth Amendment¹ medical claim includes the following elements:

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24 ¹ Although plaintiff does not specify whether he was a pretrial detainee or convicted prisoner at
 25 the time of the alleged violation, he appears to have been a pretrial detainee and the undersigned
 26 will assume, for screening purposes, that his claims are governed by the less rigorous Fourteenth
 27 Amendment standard. See Vazquez v. County of Kern, 949 F.3d 1153, 1163-64 (9th Cir. 2020)
 28 (“[T]he Fourteenth Amendment is more protective than the Eighth Amendment ‘because the
 Fourteenth Amendment prohibits *all* punishment of *pretrial detainees*, while the Eighth
 Amendment only prevents the imposition of *cruel and unusual* punishment of *convicted
 prisoners*.’” (quoting Demery v. Arpaio, 378 F.3d 1020, 1029 (9th Cir. 2004))).

(i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff’s injuries.

Gordon v. County of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018).

Plaintiff’s allegations that Ho was fully aware of his need for surgery and nonetheless denied surgery and falsified plaintiff’s records to show that plaintiff refused surgery sufficiently state a claim for relief. Accordingly, defendant Ho will be required to respond to this claim.

V. Failure to State a Claim

A. Personal Involvement

“Liability under § 1983 must be based on the personal involvement of the defendant,” Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (citing May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980)), and “[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient,” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted). With respect to defendant Fiji, plaintiff fails to state defendant’s involvement in the facts he alleges and therefore fails to state a claim against Fiji.

B. County Liability

In regards to Sacramento County, while “municipalities and other local government units . . . [are] among those persons to whom § 1983 applies,” Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978), “a municipality can be liable under § 1983 only where its policies are the ‘moving force [behind] the constitutional violation,’” City of Canton v. Harris, 489 U.S. 378, 389 (1989) (alteration in original) (quoting Monell, 436 U.S. at 694, and Polk County. v. Dodson, 454 U.S. 312, 326 (1981)). There must be “a direct causal link between a municipal policy or custom and the alleged constitutional deprivation.” Id. at 385. Plaintiff’s allegations do not identify any county or jail policy as causes of his inadequate medical treatment and therefore he fails to state a claim against Sacramento County.

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1 VI. Leave to Amend

2 For the reasons set forth above, the court finds that the complaint does not state
3 cognizable claims against defendants Fiji and Sacramento County. However, it appears that
4 plaintiff may be able to allege facts to remedy this and he will be given the opportunity to amend
5 the complaint if he desires. Plaintiff may proceed forthwith to serve defendant Ho on his claim
6 that he denied and delayed his access to adequate medical treatment in the form of hip
7 replacement surgery, or he may delay serving any defendant and amend the complaint.

8 Plaintiff will be required to complete and return the attached notice advising the court how
9 he wishes to proceed. If plaintiff chooses to amend the complaint, he will be given thirty days to
10 file an amended complaint. If plaintiff elects to proceed on his claims against defendant Ho
11 without amending the complaint, the court will proceed to serve the complaint. A decision to go
12 forward without amending the complaint will be considered a voluntarily dismissal without
13 prejudice of all claims against defendants Fiji and Sacramento County.

14 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions
15 about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode,
16 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named
17 defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981).
18 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
19 connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,
20 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official
21 participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266,
22 268 (9th Cir. 1982) (citations omitted).

23 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
24 his amended complaint complete. Local Rule 220 requires that an amended complaint be
25 complete in itself without reference to any prior pleading. This is because, as a general rule, an
26 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
27 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
28 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled

1 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
2 the original complaint no longer serves any function in the case. Therefore, in an amended
3 complaint, as in an original complaint, each claim and the involvement of each defendant must be
4 sufficiently alleged.

5 **VII. Plain Language Summary of this Order for a Pro Se Litigant**

6 Your request to proceed in forma pauperis is granted. That means you do not have to pay
7 the entire filing fee now. You will pay it over time, out of your trust account.

8 Some of the allegations in the complaint state claims against the defendants and some do
9 not. The facts you state against defendant Ho are enough to state a claim. However, you do not
10 state enough facts against the two other defendants. For you to have a claim against defendant
11 Fiji, you must state facts showing Fiji's involvement in the violation of your rights. To have a
12 claim against Sacramento County, you must state facts showing that the county's policies or
13 customs were responsible for the violation of your rights.

14 You have a choice to make. You may either (1) proceed immediately on your Fourteenth
15 Amendment medical claim against Ho and voluntarily dismiss the other defendants or (2) try to
16 amend the complaint. If you want to go forward without amending the complaint, you will be
17 voluntarily dismissing without prejudice your claims against Fiji and Sacramento County. If you
18 choose to file a first amended complaint, it must include all claims you want to bring. Once an
19 amended complaint is filed, the court will not look at any information in the original complaint.

20 **Any claims and information not in the first amended complaint will not be considered.** You
21 must complete the attached notification showing what you want to do and return it to the court.
22 Once the court receives the notice, it will issue an order telling you what you need to do next (i.e.,
23 file an amended complaint or complete service paperwork).

24 In accordance with the above, IT IS HEREBY ORDERED that:

25 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 6) is GRANTED.
26 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
27 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
28 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the

1 appropriate agency filed concurrently herewith.

2 3. Plaintiff's allegations against defendants Fiji and Sacramento County do not state
3 claims for which relief can be granted.

4 4. Plaintiff has the option to proceed immediately on his Fourteenth Amendment medical
5 claim against defendant Ho as set forth in Section IV above, or to amend the complaint.

6 5. Within fourteen days of service of this order, plaintiff shall complete and return the
7 attached form notifying the court whether he wants to proceed on the screened complaint or
8 whether he wants to file a first amended complaint. If plaintiff does not return the form, the court
9 will assume that he is choosing to proceed on the complaint as screened and will recommend
10 dismissal without prejudice of the claims against Fiji and Sacramento County.

11 DATED: June 15, 2023

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13 ALLISON CLAIRE
14 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES EDWARD TAYLOR, JR.,

No. 2:23-cv-0005 AC P

Plaintiff,

NOTICE OF ELECTION

HO, et al.,

Defendants.

Check one:

Plaintiff wants to proceed immediately on his Fourteenth Amendment medical claim against defendant Ho without amending the complaint. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing without prejudice his claims against defendants Fiji and Sacramento County pursuant to Federal Rule of Civil Procedure 41(a).

Plaintiff wants to amend the complaint.

DATED: _____

James Edward Taylor, Jr.
Plaintiff pro se